IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2313 OF 2004

Maharashtra Rajya Prathamik Shikshak)
Samiti having its address as C/o.)
Sudhakar K. Sawant, Plot No.23,)
Shivashakti Grah Sanstha, Morewadi,)
R.K. Nagar, Taluka Karveer, Dist.)
Kolhapur.)..PETITIONERS
2.Maharashtra Rajya Prathamik)
Shikshak Sangh having its)
address as C/o.Rabngarao G.Lahute,)
1780,A, Sakali Corner, Dist.Kolhapur)

Versus

1.Kolhapur Municipal Corporation)
through the Commissioner, Kolhapur)
Municipal Corporation,Kolhapur)
2.Kolhapur Municipal Primary)
Education School Board, through)
the Administrative Officer, "C")
Shivaji Market, Papa's Corner,)
Kolhapur.)
3.The Director of Education)
(Primary Education) Central)
Building, Pune.)
4.The State of Maharashtra through)
its Secretary Department of)
Education, Mantralaya, Mumbai-32.)..RESPONDENTS

Mr. S.S. Pakale, for the Petitioenrs.

Mr.R.D.Rane, A.G.P. for State.

Ms. Snehal Paranjape with Mr. S.M. Kamble, for Respondent No.1.

CORAM: F.I. REBELLO & S.P. KUKDAY,JJ.
DATE : 5th April, 2005

JUDGMENT (PER F.I. REBELLO, J.)

. Rule. By consent heard forthwith.

2. The petitioners are an association registered under the Bombay Public Trust Act, 1950 and claim to

be representing a large number of teaching and non-teaching staff employed in Primary Schools set up by the Zilla Parishads, Municipal Corporations and Municipal Councils in the State of Maharashtra. It is the case of the petitioners that by the present petition they are seeking to espouse the cause of the teaching and non-teaching staff employed in Primary Schools set up and managed by the Respondent Nos. 1 and 2 in the City of Kolhapur. The specific relief sought for in this petition is implementation of the recommendations of the 5th Pay Commission in terms of the Resolution dated 19th November, 1999 of Respondent NO.4. It is the case of the petitioners that the respondent No.4 has directed the respondent Nos. 1 and 2 to apply the said resolutions to those employed in the schools run by respondent Nos. 1 and 2. The recommendations of the 5th Pay Commission set up by the Government of India was accepted amongst others by the respondent No.4 in a revised form. Rules were thereafter made under Article 309 of the Constitution of India. The respondent No.4 thereafter also extended the benefits to the employees employed by various Zilla Parishads, Municipal Corporations, Municipal Councils including the teaching and non-teaching staff employed in Private School, Colleges, Polytechnics and others. Necessary resolutions or decisions were taken and communicated to the authorities who had to implement the same.

3. Petitioners state that the respondent No.4 passed resolutions, on 10th December, 1998 and 28th April, 1999. Pursuant to the Resolutions the Department of Finance issued orders to give effect to the recommendations of the 5th Pay Commission as accepted by Respondent No.4 to the teaching and non-teaching staff employed in the Schools. The Department of Education independently passed a resolution dated 13th May, 1999 for giving effect to the Government decision of executing the recommendations of 5th Pay Commission to the employees employed in the Schools run by the respondent Nos. 1 and 2. Similarly, the Department of Rural Development by decision dated 17th May, 1999 gave similar direction to the Zilla Parishads to adopt and follow the instructions and made it applicable to the teaching and non-teaching staff in the Primary Schools. Similar instructions were issued to Urban Development Department on 19th November, 1999 which gave directions to the Municipal Councils and Municipal Corporations to follow the Government Orders and apply them to the teaching and non-teaching staff employed in the Primary Schools set up and controlled by them. It is submitted that the Government resolution itself is self explanatory and a Code by itself. The resolution clearly directed that the revised pay scale be introduced with effect from 1st January, 1996 and arrears payable therein be deposited in the Provident Fund account by making necessary provision in the budget.

The respondent No.4 undertook to share the financial burden to the extent of 50%. Local bodies were, therefore, left with no option but to implement the directions in toto without any reservation or modification. Reliance is placed on the said Government Resolutions. It is the case of the petitioners that the Resolutions are binding upon respondent Nos. 1 and 2. The benefits provided therein have to be extended to the employees employed in their primary schools. Furthermore, the pay scale of the employees employed in Primary Schools of Municipal Corporation are protected under Bombay Primary Education Act, 1947. Under the Act the Government is an authority to decide the salary and service conditions of the employees of Primary Schools. Reliance for that purpose is placed on Section 20(3) of the Bombay Pre-Primary and Primary Education Act, 1947, which reads as under:-

> "(3). The rates of the pay and allowances and terms of employment in respect of the primary school teachers maintained by an authorised municipality shall be fixed from time to time by the State Government."

. It is, therefore, submitted that the employees of Primary Schools set up by the Municipal Corporation are entitled to receive pay in the scale as fixed by the Government. The respondent No.1 as a local body is under a legal obligation to make

necessary provision in its annual budget to implement the said instructions. It is the case of the petitioners that whilst implementing the Government Resolution dated 19th November, 1999 the Respondent Nos. 1 and 2 illegally, unauthorisedly and unconstitutionally moved and altered the resolution dated 19th November, 1999 extending the benefits of the resolution with effect from 1st October, 2001 instead of 1st January, 1996. The case of the petitioners is that this action on the part of respondent Nos. 1 and 2 is illegal, unjust, unreasonable, unconstitutional and without authority of law as the provisions of the Bombay Primary Education Act, 1947 and Rules, 1949 are applicable to the employees of Primary Schools set up by Municipal Corporations. The petitioners members are entitled to receive the same as provided in Government Resolution dated 19th November, 1999.

4. The petitioners have further averred that the Respondent No.4 vide its resolution dated 17th May, 2002, had made necessary budgetary provisions to the tune of Rs.29,80,00,000/- in favour of the Municipal Councils and Municipal Corporations for the payment of arrears on account of revised salary. The resolution also provided that the money so released would not be used for any other purpose. It is the case of the petitioners that the respondents must have received their share. They had however, failed to pay the same to the beneficiaries. It is then set

out that as per Rule 154 of the Bombay Primary Education Rules 1949, the respondent NO.2 ought to have made necessary provision in its annual budget to pay the salary and allowances as fixed by respondent No.1 to the teaching and non-teaching staff employed by them. It is then pointed out that various representations made by the petitioners to the authorities, went in vain. A legal notice was also served. It is then pointed out that the teaching and non-teaching employees in Zilla Parishad Schools are receiving revised pay scales with effect from 1st January, 1996. Similarly, the teaching and non-teaching staff employed by other Municipal Corporations and Municipal Councils are also receiving the benefit. In so far as the employees employed by Resolution Nos. 1 and 2 they have been paid the revised pay scale with effect from 1st October, 2001, instead of 1st January, 1996. It is again reiterated that this action is arbitrary and violative of Article 14 of the Constitution of India. It is based on this that the reliefs have been prayed for.

5. On behalf of the Respondent NO.3 affidavit has been filed by Babasaheb Natha Patil. It is set out that the reliefs sought for by the petitioners is as per order issued by the State of Maharashtra vide Government Resolution dated 19th November, 1999 and deserves due consideration. It is explained that the resolution dated 19th November, 1999 has been issued

by Urban Development Department and not by the Education Department of the Respondent No.4. It is set out that the service conditions as prescribed and the pay scales given in so far as staff of Municipal Corporation/Councils Primary Schools is to be given by the Urban Development Department. In respect of the employees in Primary Schools/Municipal Corporation/Municipal Councils, the service conditions as prescribed by the Urban Development Department and the Bombay Provincial Municipal Corporation Act are also applicable. The provisions of Bombay Primary Education Act 1947 are also to be observed to certain extent. The pay scales recommended by the Pay Commission and accepted by the concerned Department are also admissible. It is then pointed out that recommendations of the 5th Pay Commission have been made applicable to the employees in Primary Schools run by the Municipal Corporation/Council vide resolution dated 9th October, 1999. The respondent Nos. 1 and 2 are, therefore, bound by the revised pay scales applicable to the teaching and non-teaching staff in their primary schools. As such the Respondent Nos. 1 and 2 have started to pay the salary in the revised pay scale with effect from 1st October, 2001. The arrears, however, from 1st January, 1996 to 30th September, 2001 have not been paid for want of necessary budgetary provisions. The expenditure is to be borne 50% by the Respondent No.1 and 50% is to be given by way of grants by Education Department of

Respondent NO.4. The Education Department has sent a sum of Rs.98,68,000/- vide G.R. dated 17th May, 2002 towards the arrears claims on account of revised pay scales with effect from 1st January, 1996. The Respondent No.1, however, failed to provide 50% share. Consequently the employees in Primary Schools run by the respondent Nos. 1 and 2 have not been paid arrears from 1st January, 1996 upto 30th September, 2001 as yet. The respondent No.2 is not having its own income source and as such for the 50% share, budgetary provision has to be made by the respondent No.1. The employees in Primary Schools of Respondent No.1 and 2 are entitled to get their salary in terms of the 5th Pay Commission recommendation Scale with effect from 1st January, 1996 as they have been made applicable by G.R. dated 19th November, 1999.

6. On behalf of the Respondent No.2, P.G. Sathe, Administrative Officer has filed an affidavit. It is set out that the Government Resolution dated 19th November, 1999 is being implemented by Respondent No.2 and to that effect the respondent No.2 has passed resolution No.161 dated 17th January, 2000. Resolution No.161 dated 17th January, 2000 passed by the respondent No.2 was submitted to respondent No.1 for final sanction. The general body of respondent No.1 passed resolution No.199 dated 19th May, 2000. It is pointed out that the respondent NO.4 had made necessary budgetary

provision by resolution dated 17th May, 2002 in favour of respondent No.1 for payment of arrears on account of revised pay scale. The amount was received by respondent No.2. However, they did not receive 50% share from the respondent NO.1. The amounts remained unutilised by the respondent No.2. Thereafter by letter dated 21st July, 2002 as per directions given by Deputy Director of Education, Kolhapur Region, the amount is being used towards salary purposes. It is then pointed out that the resolution passed by the respondent No.2 was forwarded to Respondent No.1 which passed resolution No.199 dated 19th May, 2000 and sanctioned an amount of Rs.1,66,60,000/-. The amount has, however, not ben released by the Corporation till date. It has become impossible for the Respondent No.2 to make payment in the absence of receiving funds.

7. On behalf of respondent NO.1 an affidavit has been filed by Digambar Vasudeo Gholkar, Chief Accountant. It is set out that the petition should be dismissed in view of resolution dated 15th October, 2001 of the General Body of respondent No.1. By that resolution being No.412 it was resolved that in view of the decision of the State Government as contained in the G.R. dated 17th September, 2001, the arrears of pay as per 5th Pay Commission in respect of teaching and non-teaching staff of Primary Schools in so far as the 1st respondents share is concerned, shall be withheld to avoid any

discriminatory and differential treatment to the staff of the respondent No.1 whose arrears under the 5th Pay Commission were withheld pursuant to the said G.R. dated 17th September, 2001. It is, therefore, set out that the resolution dated 19th September, 2000 bearing NO.199 stood superseded and became ineffective. The petitioners, it is pointed out, were duly informed of both these resolutions.

. It is pointed out that the 1st respondent is facing severe financial crisis and has to put several development projects on hold due to paucity of funds. It has undertaken water supply project Scheme for which it has taken loan and has to repay the loan inclusive of interest to the tune of Rs.5 to Rs.6 crores per year. There are outstandings to the tune of Rs.10.96 crores. The IInd Phase has been sanctioned for which the respondent No.1 will have to raise funds by way of loan to the extent of Rs.18.30 crores. Various other amounts required for the purpose of drainage project, sewerage project and other development projects are then set out. The source of raising revenue, it is pointed out are few and the respondent No.1 has to pay the State Government also a large amount of money. These facts were placed before the State Government with the request to release additional funds to the extent of Rs.34.30 crores for meeting the demand of the petitioners as well as the employees of 1st respondent. It has implemented the 5th Pay

Commission scale to its own employees as well as for the staff of primary schools with effect from 2001. It is pointed out that the demand of the petitioners is for arrears of pay retrospectively. The respondent No.1 has no opportunity of raising funds to meet the demand, as Respondent No.1 cannot retrospectively increase tuition fees or recover amount from operating revenue at the relevant time. It is, therefore, set out that in those circumstances the petition ought to be dismissed.

8. From the above, the question that arises for consideration is whether inspite of the Government Resolution dated 19th November, 1999, the respondent No.1 can refuse to implement the said Resolution on the ground that in so far as its other employees are concerned, the pay scales have been made effective only from the year 2001 in view of the subsequent G.R. dated 17th September, 2001. In fact on behalf of respondent No.1 their learned Counsel has relied on the judgment in the case of **Rammayya Venkat Narsu Bura v. The State of Bombay and Anr., AIR 1960 Bom.46** to contend, that the employees of the schools administered by respondent No.2 are also employees of respondent No.1 and in these circumstances the respondent No.1 could not have discriminated in the matter of pay scales between its other employees and employees employed in schools administered by respondent No.2. Reliance is also placed on the judgment of **Sunanda Pandharinath Adhav & Ors. V.**

State of Maharashtra & Ors., 2001 (1) Mh.L.J. 167 to contend that as the respondent No.1 could not increase their fees, the resolutions could not be applied with retrospective effect and in these circumstances the decision of the respondent No.1 to make it effective from 2001 cannot be said to be arbitrary.

9. By resolution dated 19th November, 1999 the State Government decided to implement revised pay scales as per the recommendations of the Vth Pay Commission for Primary Teachers under Municipal School Board in the State. The list of posts was enlisted as per list "A" of the G.R. The Pay scales had been implemented for teaching and non-teaching staff in the Private Schools. Similarly, Rural Development Department has approved revised pay scales for teaching and non-teaching staff in Zilla Parishad Schools. The issue of applying revised pay scales to primary teachers under Municipal Education Board was under consideration. The Government had approved the proposal of allotting revised pay scale for primary teachers under Municipal Education Board and had passed G.R. dated 19th November, 1999 of which the following are relevant:-

> "...The revised pay scales will be implemented w.e.f. 1.1.1996. The rules regarding Pay Fixation as per revised Pay-Scales will be as per mentioned in the

enclosed Annexure."

"....The amount of third instalment of final increase for teachers under Municipal Education Board who are eligible for the period from 01.01.1996 to 30.08.1996 (including both the days) and the amount of Rs.2,500/- approved vide Finance Department, Government Over No.Vepur-1098/Pra Kra 27/98/Seva-10, dated 09.10.1998 may be from the arrears amount to be paid to the staff and may be included in the pension amount. This amount will not be allowed to be withdrawn for the period of 3 years upto December, 2001. However, the staff who have retired from service or have left the service during this period will be exception to this."

In the rules framed, the 'Revised Earned Pay' means the basic pay in the revised pay scale of the primary teachers. The revised pay scale means, the pay for the posts mentioned in column 2 of the Annexure. The posts included in the annexure are teaching posts.

. From the above it is clear that the pay scales are to be implemented in schools run by the Municipal Education Board from 1st January, 1996 for teaching staff.

10. The respondent No.1 though has implemented the pay sacales for all its employees including teachers, but has made it applicable not from 1st January, 1996, but in view of the subsequent Government Resolution of 17th September, 2001 with effect from 1st January, 2001. That subsequent resolution was issued by the Government in exercise of the powers vested in it, as per the provisions of Section 45(1) and 61(4) of the Bombay Provincial Municipal Corporation Act, 1949.

. We have earlier noted Section 20(3) of the Bombay Pre-Primary and Primary Education Act, 1947. It is clear from that sub-section, that the authorised municipality shall pay wages and allowances as fixed from time to time by the State Government. The resolution of the State Government dated 19th November, 1999 would clearly be a direction fixing the rates of pay and allowances of teachers employed in primary schools run by the Municipal Education Board. Once such Resolution was passed it is not open to Respondent No.1 or for that matter the respondent No.2 to fix pay and allowances other than those which are fixed by the State Government. That would also include the date from which the pay and allowances are ought to be paid. We are clearly of the opinion that considering the G.R. dated 19th November, 1999 and the Rules, framed thereunder and the Annexure to the said Rules, for all posts covered under Annexure "A", the pay and

allowances and the period from which they ought to be paid would clearly be covered by G.R. dated 19th November, 1999. The Respondent No.1 could not have passed any resolution contrary to the power conferred on the State Government by virtue of the provisions of the Bombay Pre-Primary and Primary Education Act, 1947.

11. The submission of the Respondent No.1, however, is that it being a local authority there is subsequent resolution of the State Government dated 17th September, 2001. In terms of that Resolution the pay scales based on the 5th pay recommendation are to be implemented with effect from 1st October, 2001. Based on this Government Resolution, the Respondent No.1 passed a resolution on 15th October, 2001. As the teachers of Primary Schools are also employees of respondent No.1 that date is also made applicable to them.

. It is true that in the case of Rammayya Venkat Narsu Bura (supra) though the issue arose out of an election petition, nevertheless a Division Bench of this Court also considering the provisions of the Bombay Municipal Boroughs Act which provisions are similar to the Act under consideration, held that the Primary School teachers are the servants of an authorised Municipality. Even if that be so, the conditions of service are however regulated under two different Acts. In so far as teachers are concerned

the pay and allowances are to be fixed in terms of the Bombay Pre-Primary and Primary Education Act, 1947 and in respect of the other staff, it is under the provisions of the Bombay Provincial Municipal Corporation Act, 1949. By virtue of these two enactments, the teachers have been treated as a distinct class in the matter of pay and allowances. Once that be the case the Government Resolution of 17th September, 2001 would be applicable to the employees who are governed by the provisions of the Bombay Provincial Municipal Corporation Act, 1949. The teachers being a class apart and regulated by another enactment would, therefore, be not governed by the Government Resolution of 17th September, 2001. As we have earlier noted the Government Resolution dated 19th September, 2001 has been made in terms of the powers vested in the Government under the provisions of Section 45(1) and 51(4) of the Bombay Provincial Municipal Corporation Act, 1949. Once the exercise of the power and the source of the power was different the respondent No.1 clearly acted without jurisdiction in passing the resolution on 15th October, 2001 in so far as Primary Teachers are concerned. The Primary Teachers would continue to be governed by the Government Resolution dated 19th November, 1999. In terms of that Government Resolution the posts covered by Annexure "A", will carry the pay scales from 1st January, 1996 and will be paid in terms of the said resolution. The petition to that extent will have to be partly

allowed.

. On behalf of the respondent Nos. 1 and 2 reliance was also sought to be placed on the judgment of **Sunanda Pandharinath Adhav and Ors. (supra)**. Firstly that judgment dealt with teachers of private unaided schools. The Division Bench noted that managements of such private unaided schools did not have freedom to enhance tuition fees without sanction of the State Government. In these circumstances the learned Division Bench was pleased to hold that the petitioner before it would be entitled to the benefits pursuant to the 5th Pay Commission recommendations with effect from 1st May, 1999. That judgment would, clearly be of no assistance in so far as the teachers employed with the respondent Nos. 1 and 2. In their case it was open to the State Government to fix the rates of pay and allowances which it has done. Even otherwise it is the duty of respondent No.1 to provide for primary education within its jurisdiction. Primary education is recognised as a fundamental right. Respondent Nos. 1 and 2 are bound to provide free primary education in schools run by them. Once that be the case the ratio in the case of Sunanda Pandharinath Adhav (supra) would clearly not be attracted.

12. There is nothing shown to us to show that G.R. dated 19th November, 1999 would also apply to the non-teaching staff. The G.R. itself and the

Rules framed thereunder make a reference to the posts mentioned in the Annexure. The posts as mentioned in the Annexure are primarily teaching posts. There is no post set out in the Annexure which is a non-teaching staff. Therefore, in respect of the posts set out in Annexure "A" the pay scales payable will be in terms of Government Resolution dated 19th November, 1999 only. That would mean that the resolution of 19th November, 1999 would not apply in so far as the non-teaching staff is concerned. Considering that they are also employees of the respondent No.1, what would be applicable would be the G.R. dated 17th September, 2001. It is true that the Government in respect of private schools have applied pay scales to both teaching and non-teaching staff as can be seen from the preamble to the Government Resolution. From the pleadings in the petition it appears that in other Municipalities/Councils,, even non-teaching staff are being paid the revised salaries. Even if that be so, there is no reference to the non-teaching posts in Exhibit "A". It would, therefore, be clear that as the posts held by non-teaching staff are not governed by Annexure "A" they would not be entitled to the pay scales from 1st January, 1996, but their pay scales would be fixed based on the Government Resolution of 17th September, 2001 and would be payable with effect from 1st October, 2001. We make it clear that as the petitioners have not raised the issue of discrimination between non-teaching staff of private

schools, Zilla Parishads and the non-teaching staff of Primary Schools of Municipal Boards, we have not examined that issue and leave it open. It will also be open to the Respondent No.4, if it was its intention to apply the G.R. of 19th November, 1999 to non-teaching staff then to issue clarificatory orders.

13. In the light of the above the resolution of respondent No.1 dated 15th October, 2001 of Respondent No.1 making applicable the Government Resolution dated 17th September, 2001 also to Primary Teachers on the establishment of the Municipal Education Board is without the authority of law. The respondents are directed to make payment to the primary teachers in the schools run by respondent Nos.1 and 2 in terms of G.R. dated 19th November, 1999. The entire exercise to be completed within six months from today. In the circumstances of the case there shall be no order as to costs.

(F.I.REBELLO, J.)

(S.P. KUKDAY, J.)